

Community Domestic Violence Resources

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2.1 Statewide Agencies That Address Domestic Violence from the Perspective of Abused Individuals

There is broad consensus that the most effective response to domestic violence is a *coordinated community response*, in which the court's efforts are part of a continuum of services offered by the justice system and social services communities. Courts can best function as part of a coordinated community response when they are aware of the variety of specialized services provided by domestic violence agencies. This section contains information about such agencies at the statewide level.

Note: The services described here and throughout this chapter are primarily focused on domestic violence occurring in heterosexual relationships with male abusers. The discussion has been framed in this way because of the disproportionate number of cases in the criminal justice system involving heterosexual relationships in which the male is the abuser.* Moreover, few studies exist about violence in same-sex relationships. However, domestic violence perpetrators can be men or women involved in heterosexual or same-sex intimate relationships. Information about services for individuals in same-sex relationships or in heterosexual relationships with female abusers can be obtained from the Michigan Coalition Against Domestic and Sexual Violence (described below), or from a local domestic violence service agency (described in Section 2.2 - 2.3).

The Michigan Domestic Violence Prevention and Treatment Board, the Michigan Coalition Against Domestic and Sexual Violence, and the Michigan Resource Center on Domestic and Sexual Violence are organizations operating at the statewide level to address the prevention and treatment of domestic violence from the perspective of abused individuals. Although these agencies do not provide direct assistance to persons subject to domestic abuse, they can provide local referrals, information about domestic violence, training resources, and technical assistance to courts.

*The Nat'l Crime Victimization Survey estimates that in 1998, women were victims of intimate partner violence at a rate about five times that of men. Rennison & Welchans, *Intimate Partner Violence*, p 2 (Bureau of Justice Statistics Special Report, May, 2000).

*A complete list of the MDVTPB's powers and duties appears at MCL 400.1504; MSA 16.611(4).

A. Michigan Domestic Violence Prevention and Treatment Board

The Michigan Domestic Violence Prevention and Treatment Board (“MDVPTB”) was created as a department within the Department of Social Services (now the Family Independence Agency) in 1978. Some of its duties include:*

- F Coordinating and monitoring programs and services for the prevention and treatment of domestic violence.
- F Developing standards for the implementation and administration of services and procedures to prevent domestic violence and to assist its victims.
- F Coordinating statewide efforts to educate justice system and other professionals about domestic violence.
- F Studying and recommending changes in civil and criminal procedures that will enable victims of domestic violence to receive equitable and fair treatment under the law.
- F Advising the Legislature and Governor on the nature, magnitude, and priorities of the problem of domestic violence and the needs of its victims, and recommending changes in state programs, statutes, policies, budgets, and standards that will reduce the problem and improve the condition of victims.

The MDVPTB’s philosophy (as adopted by the Board in March, 1992) is as follows:

“Domestic violence is rooted in an antiquated sexist social structure that produces profound inequities in the distribution of power and resources; in the roles and relationships between men, women, and children in families; and has devastating effects on victims, their children, and the entire society. It is criminal conduct that cannot be tolerated. A comprehensive community response to domestic violence through education, advocacy, and appropriate intervention is necessary to bring about change and end the violence. Battering stops only when assailants are held accountable for their abuse.

“The MDVPTB shall promote the empowerment of survivors and seek social change to redress the existing power imbalance within violent relationships. To make informed decisions for themselves and their children, survivors need access to safety, and information about domestic violence, available options and community resources. The MDVPTB is committed to treating survivors with dignity and respect, and to providing them the support and advocacy necessary to realize their right to self-determination.”

This “empowerment” philosophy of the MDVPTB starts from the proposition that persons subject to domestic violence actively seek to live violence-free lives, and in doing so are most in need of help and support from their communities. Indeed, the characterization of these persons as “survivors” in the advocacy community is intended to reflect a sense of empowerment; the term “survivor” affirms that a person has made successful efforts to survive domestic violence. Some domestic violence advocates may thus avoid the term “victim,” which is regarded as a passive term that does not account for

the abused person's ability to get on with life after experiencing domestic violence.

In carrying out the duties listed above, the MDVTPB administers funds to local and statewide agencies. It also provides technical assistance to local entities, particularly with regard to educational efforts. The MDVTPB sponsors frequent domestic violence training events for service providers, police, prosecutors, judicial branch employees, and other professionals who are involved in providing service for individuals experiencing domestic violence. MDVTPB staff also speak at training events sponsored by the professional organizations for these service providers (such as the Michigan Judicial Institute, the Michigan Commission on Law Enforcement Standards, and the Michigan Coalition Against Domestic and Sexual Violence).

The MDVTPB is located at 235 S. Grand Avenue, Suite 506, P.O. Box 30037 Lansing, Michigan 48909, telephone 517-373-8144. Its website address is www.mfia.state.mi.us/CFSAdmin/dv/domestic_violence.html.*

*Web site visited August 8, 2001.

Note: MCL 400.1501(d); MSA 16.611(1)(d) defines "domestic violence" for purposes of the MDVTPB's activities. A complete citation appears at Section 1.2.

B. The Michigan Coalition Against Domestic and Sexual Violence

The Michigan Coalition Against Domestic and Sexual Violence ("MCADSV") was incorporated as a private non-profit corporation in 1978. It is dedicated to the empowerment of all the state's survivors of domestic and sexual violence.

The mission of MCADSV is to develop and promote efforts aimed at the elimination of all domestic and sexual violence in Michigan. MCADSV is a statewide membership organization whose members represent a network of 70 domestic violence and sexual assault programs and over 100 allied organizations and individuals. The member agencies of MCADSV provide comprehensive emergency and support services to victims of domestic and sexual violence.*

*See Section 2.2(B) for a detailed discussion of the services provided by local domestic violence agencies.

MCADSV promotes public awareness and provides leadership, advocacy, training, and technical assistance on issues regarding domestic violence and sexual assault. The organization participates in collaborative efforts to promote social change with local, state, and national organizations. It also provides a forum for the exchange and development of skills and information regarding the community's response to domestic and sexual violence.

MCADSV researches, compiles, and disseminates current statistics, and produces a number of publications addressing the technical assistance needs of its members. MCADSV's priority is to support domestic and sexual violence prevention and intervention work in communities throughout the state of Michigan.

The goals of MCADSV are aimed at ensuring the delivery of quality services to victims of sexual assault and domestic violence. The organization accomplishes its goals by:

- F Providing technical assistance and comprehensive issue-based training services to its members.
- F Advocating for changes in public policy on behalf of domestic violence and sexual assault survivors.
- F Promoting public awareness and acting as a clearinghouse of information on the most current issues relating to domestic violence and sexual assault.

Recent educational efforts by the MCADSV include:

- F Technical Assistance Bulletins made available through newsletters, publications, member alerts, and the MCADSV web site (www.mcadsv.org — visited August 8, 2001).
- F Education for new service providers in the field of domestic and sexual violence.
- F Education for executive directors of service agencies.
- F Technical assistance workshops and teleconferences on a variety of emerging issues in the field of domestic and sexual violence.

The MCADSV also lends its expertise to numerous statewide public policy initiatives. In recent years, these initiatives have included:

- F The Curriculum Advisory Committee and the Model Policy Advisory Committee of the Michigan Law Enforcement Officers Training Council (now the Michigan Commission on Law Enforcement Standards).
- F The Governor's Task Force on Batterer Intervention Services.
- F The Domestic Violence Laws Implementation Task Force and Subcommittees.
- F The Michigan Department of Community Health Violence Against Women Advisory Committee.
- F The Michigan Department of Community Health Sexual Assault Surveillance System Advisory Committee.

The MDADSV promotes public awareness about domestic and sexual violence through projects and special events. Its public awareness products include:

- F Newsletters (*The Coalition Connection*, a biannual *Review*, and a biannual *Public Policy Update*).
- F Posters and brochures.
- F *Handbook for Survivors of Sexual Assault*.
- F Brochure for teachers and school counselors on domestic and dating violence.

- F *Victim Assistance Card for Survivors of Sexual Assault.*
- F *Handbook for Survivors of Professional Sexual Exploitation.*
- F Annual public awareness campaign for Domestic Violence Awareness Month in October.
- F Annual public awareness campaign for Sexual Assault Awareness Month in April.

The Michigan Coalition Against Domestic and Sexual Violence is located at 3893 Okemos Rd., Suite B-2, Okemos, Michigan 49964, telephone 517-347-7000. Its web site address is www.mcadsv.org (visited August 8, 2001).

C. Michigan Resource Center on Domestic and Sexual Violence

The Michigan Resource Center on Domestic and Sexual Violence is a collaboration of the Michigan Domestic Violence Prevention and Treatment Board and the Michigan Coalition Against Domestic and Sexual Violence. The MDVPTB is the primary funder and owner of the collection, which is housed at the MCADSV. Additional funding is provided by the U.S. Department of Health and Human Services and other supporters of the MCADSV. The collection is comprised of over 3,000 books and 350 videos on domestic and sexual violence. The collection and research services are available for all of Michigan's citizens to utilize at no charge. Besides distributing materials, the Resource Center is engaged in the following activities:

- F Development and distribution of *Fact Sheets* and *Statistics* on violence against women.
- F Research and technical assistance to Resource Center patrons.
- F Mobile lending library at statewide conferences.
- F Distribution of a quarterly newsletter (*The Source*).
- F Development and distribution of Technical Assistance Packets on a variety of issues related to violence against women.

The Michigan Resource Center on Domestic and Sexual Violence is located at 3893 Okemos Rd., Suite B-2, Okemos, Michigan 49964, telephone 517-347-7000. Its web site address is www.mcadsv.org (visited August 8, 2001).

2.2 Local Agencies That Address Domestic Violence from the Perspective of Abused Individuals

A. Community Coordinating Councils

Domestic violence is a problem of such complexity that no single social institution acting alone can adequately address the needs of those it affects. Domestic violence typically calls for action by multiple community agencies concerned with such issues as criminal activity, child welfare, health care, and

*See Saunders, *Domestic Violence Perpetrators: Recent Research Findings & Their Implications for Child Welfare*, 3 Mich Child Welfare Law J 3, 8 (Fall, 1999).

*See Section 2.6 for discussion of ethical concerns that arise with judicial participation in a coordinated community response organization.

*Rygwelski, *Beyond He said/She said*, p 71–72 (Mich Coalition Against Domestic Violence, 1995).

housing. A community’s response may thus be most effective if each of its responding agencies works in concert with the others.* To foster a community-wide system of prevention and intervention that meets the needs of those affected by domestic violence, many communities have formed domestic violence coordinating councils (also called a “coordinated community response”).

The membership, structure, and mission of a coordinating council will be unique to its particular location. A coordinating council may simply be an informal network of professionals who meet periodically to discuss issues of common concern. In some communities, the coordinating council has developed into a formal organization with a full- or part-time staff that meets on a regular basis. The agencies represented on community coordinating councils may include courts, prosecutor’s offices, law enforcement agencies, local domestic violence service agencies, child protective services, health care agencies, clergy, schools, and others that respond to families where violence is present. The typical activities of a coordinating council include:

- F Identifying and coordinating the roles and services of local agencies that provide services to persons experiencing domestic violence.
- F Monitoring, evaluating, and promoting the quality and effectiveness of services and protections in the community.

Court cooperation with a local coordinating council can familiarize the court with local domestic violence resources and specialists, and give it the opportunity to have a voice in local policies regarding domestic violence. Participating court personnel can also provide accurate information to other agencies about court policies and procedures, which can be passed on by these agencies to persons involved in relationships where domestic violence is present.*

Local domestic violence service agencies can be contacted for more information about cooperation with a community’s coordinated response to domestic violence. A list of local service agencies appears in Appendix A.

B. Domestic Violence Service Agencies

Michigan domestic violence service agencies provide abused individuals with help and support in getting free from violence. They typically base their approach on a philosophy of self-help and empowerment, providing information and assistance, but encouraging battered women to make their own decisions and to create their own support systems to help them to continue living violence-free. This “empowerment philosophy” posits that healing occurs when a battered woman realizes that she is not alone and that she is not to blame for the violence perpetrated against her. It further assumes that healing can happen when a battered woman reaches out and provides support to other women. Empowerment philosophy intends to counteract the helplessness and immobility that often accompanies a life crisis and to put responsibility for ongoing change into the hands of the battered woman.* By

encouraging a woman to look inward and assess her own needs and the resources she possesses to fulfill them, faith in herself and her abilities can be restored. This approach is thought to be particularly helpful for the battered woman, who throughout her relationship has repeatedly had her power undercut and seized by the batterer.

Domestic violence service agencies provide shelter, as well as many other forms of assistance to individuals experiencing domestic violence. Domestic violence agencies receiving funds from the Michigan Domestic Violence Prevention and Treatment Board must provide services for non-residents as well as for residents of shelters. See MCL 400.1507; MSA16.611(7) for a list of services provided by shelters that may receive funds from the MDVPTB. The types of services provided are not uniform statewide; however, the following services are common:

F Twenty-four-hour emergency shelter

Emergency shelter typically includes food, clothing, and other personal necessities for a limited period of time (for example, 30 days). Although shelters are generally not licensed to provide child care, most admit children with their parents. Since abusers often direct violent behavior towards pets, a few shelters have developed programs to assist residents with caring for their animals.

F Twenty-four-hour telephone crisis lines

This service is provided to both shelter residents and non-resident populations.

F Individual and group counseling

This service is provided for both shelter residents and non-resident populations. Group counseling is particularly desirable, because it helps to overcome the sense of isolation that many abused individuals experience.*

*Isolation of the victim is one common tactic used by abusers. See Section 1.5.

F Transportation assistance

This service is typically provided for residents in shelter; it may also be provided for non-residents as resources allow.

F Safety planning

This service is generally provided for both shelter residents and non-resident populations.

F Advocacy with social service agencies

This service is generally provided for both shelter residents and non-residents. Depending upon the agency's staffing, it may include help with filling out forms, applying for government assistance, or obtaining legal services.

F Child services

Although they are not generally licensed to provide child care, domestic violence service agencies may provide services (such as counseling or activities) to the children of shelter residents or non-resident clients. One Michigan shelter (HAVEN in Pontiac) administers supervised parenting time programs.

F Assistance finding permanent housing

This service is typically provided for residents in shelter, and for non-residents as needed.

F Assistance finding medical or other health care

This service is typically provided for all clients. Some shelter programs have access to medical care on-site. In some shelters, residents have access to substance abuse programs such as AA or Alanon.

F Information and education about domestic violence

This service is provided to both residents and non-residents of shelter, as well as to community members generally.

F Other educational services

An individual's period of receiving services can be an opportunity to gain basic life skills in household management, managing finances, parenting, nutrition, and child health care. Residents may also learn about their legal rights, or about available social or mental health services.

F Assistance with court proceedings

MCL 600.2950c; MSA 27A.2950(3) authorizes the family division of the circuit court to provide a domestic violence victim advocate to assist victims of domestic violence in obtaining a personal protection order. The court may use the services of a public or private agency or organization that has a record of service to domestic violence victims.* Under this statute, advocates may provide such services as: assisting the victim with serving, modifying, or rescinding a PPO; providing an interpreter for a case involving domestic violence, including a request for a PPO; informing the victim of the availability of shelter, safety plans, counseling, other social services, or generic written material about Michigan law. The statute further provides that domestic violence victim advocates are prohibited from representing or advocating for domestic violence victims in court.

In addition to providing the foregoing services to persons subject to domestic abuse, domestic violence service agencies can be a valuable resource to courts. Cooperative arrangements with service agencies can assist a court's information-gathering processes, and provide a court with a valuable referral resource.* Obtaining information from a domestic violence expert early in a case assists the court in promoting safety, and provides an adequate factual basis for the court's decision-making. Furthermore, service agency employees who are familiar with court policies and procedures can often help

*See Section 7.2(B) for more information.

*See Lovik, Friend of the Court Domestic Violence Resource Book, Section 2.12(A) (MJI, 2001).

their clients to better understand court proceedings and to access pro bono legal services if these are needed. Many domestic violence service agencies make educational programs or speakers available to community organizations such as schools, professional organizations, or charitable groups. This type of service is useful to courts making efforts to educate their staff about the nature and dynamics of domestic violence.

A list of local domestic violence service agencies appears in Appendix A.

2.3 Batterer Intervention Services

It is not clear what contributes to the cessation of abuse. Some studies show that some men stop their violence, especially those who were never severely violent. In a criminal context, arrest and prosecution are seen to have a deterrent effect. There are also a variety of interventions, known as “batterer intervention services,” that can serve as referral resources in both civil and criminal contexts.*

Although they vary in approach, batterer intervention services are generally designed to hold domestic violence perpetrators accountable for their actions, and to provide them with an opportunity to change their behavior. In criminal misdemeanor cases, courts may order domestic violence defendants to participate in a batterer intervention service program as a condition of probation. In civil domestic relations proceedings, it may also be useful to refer an abusive party to a batterer intervention service provider; some judges will require an abusive party to participate in a batterer intervention program as a condition of exercising parental rights to a child.

Courts will not find conclusive research to guide them in making referrals to batterer intervention service programs.* However, there is widespread agreement about two basic requirements for such programs:

- F Most professionals who work with batterers agree that **abusers must be held accountable** for their behavior. Researchers and other professionals generally agree that domestic violence perpetrators are not suffering from a psychological or biological illness that prevents them from changing their behavior, except in rare cases involving psychosis or other mental illness. In most cases, researchers believe that domestic violence is a learned pattern of behavior, chosen by the abuser for the purpose of controlling an intimate partner.* Since abusers choose to engage in abusive behavior, they can also choose to change. Based on these assumptions, many researchers assert that batterer intervention services should motivate abusers to change by holding them accountable for their behavior.
- F In addition to accountability, **safety** is a primary concern in providing batterer intervention services to abusers. The danger abusers pose to their intimate partners and others requires batterer intervention service providers to carefully consider the effects of their services on safety.

*Saunders, *Domestic Violence Perpetrators: Recent Research Findings & Their Implications for Child Welfare*, 3 Mich Child Welfare Law J 3, 5–6 (Fall, 1999). This article discusses findings that different types of offenders seem to respond better to different types of treatment.

**Id.*, p 7.

*For more discussion of the causes of abuse, see Section 1.3.

*See *Health Watch*, 6 Domestic Violence Report 37 (Feb/March 2001).

*The full text of the Batterer Intervention Standards appears in Appendix C.

*In some areas, batterer intervention is included among the services provided by the domestic violence agency.

In making use of batterer intervention service programs, courts should be aware of the potential for both positive and negative outcomes. Although a batterer intervention program provides the opportunity for change, it may also give the court and the abused individual a false sense of security. Courts and abused individuals should be aware that batterer intervention services cannot guarantee that participants will change their behavior. Indeed, some research questions the efficacy of batterer intervention programs in stopping abuse.* Accordingly, both the court and the abused individual must be careful to do an ongoing assessment of an abuser's potential for lethality, as noted in Section 1.4(B).

To assist courts in identifying batterer intervention services that respond to the need for safety and accountability, many states and several Michigan localities have promulgated "batterer intervention standards." These standards articulate minimum guidelines for the operation of batterer intervention services as they work to provide abusers with an opportunity to change their criminal behavior.

In July, 1997, Governor John Engler established a Task Force on Batterer Intervention Standards for the State of Michigan to develop statewide standards for programs providing services to court-ordered perpetrators of domestic violence and to make recommendations for improving the courts' response to the crime of domestic assault. In June, 1998, this Task Force released its recommendations for batterer intervention standards. The Task Force recommendations were endorsed by Governor Engler in January, 1999, and by the 2001 Governor's Domestic Violence Homicide Prevention Task Force. See *Report and Recommendations*, Domestic Violence Homicide Prevention Task Force, p 12, 18 (April, 2001).* On January 11, 1999, the State Court Administrator issued Administrative Policy Memorandum 1999-01, which encouraged Michigan courts to follow the guidelines set out in the state standards when ordering convicted criminal defendants to participate in batterer intervention as a condition of probation. Although the statewide Batterer Intervention Standards were drafted for use in a criminal sentencing context, they can also be a useful tool in civil domestic relations actions. The Standards' recommendations on intervention modalities for domestic violence can inform the court's choice of a referral agency in a domestic relations case.

Information about local batterer intervention programs can often be obtained from the local domestic violence service agency.* On a statewide level, the Batterer Intervention Service Coalition of Michigan ("BISCM"), is an organization whose membership includes people and agencies working in batterer intervention services, battered women's services organizations, and coordinated community response efforts. The organization provides a working forum for interaction and information-sharing among agencies and individuals concerned with the provision of batterer intervention services in Michigan.

The BISCM goals include educating the community about the realities of domestic violence, and developing, implementing, and monitoring standards

that seek accountability in batterer intervention service delivery and community coordination. The Batterer Intervention Services Coalition may be contacted as follows: C/O Total Health Education, 2627 N. East Street, Lansing, Michigan 48906. Its website address is: www.comnet.org/bisc (visited August 8, 2001).

2.4 Characteristics of Safe, Effective Batterer Intervention Services Under the Statewide Standards

Michigan's statewide Batterer Intervention Standards ("Statewide Standards") address program curriculum and format, contra-indicated interventions, participant rights, communications with courts and victims, and staff qualifications. These recommendations are all intended to apply to men who batter women. See Statewide Standards, §4.2. The Standards document explains that its applicability to male batterers reflects "the predominant pattern of domestic violence. Most men are not batterers, but most batterers are men. Female battering towards males occurs, as does battering in lesbian and gay relationships, but until more is known about appropriate intervention in such relationships, these standards will apply to a [batterer intervention service] for men who batter."

A. Program Curriculum and Format

Michigan's statewide Batterer Intervention Standards recommend initial intake screening for all persons seeking services. Recommended intake procedures include lethality evaluation (which should be ongoing throughout the program)* and information gathering. Potential participants should be questioned regarding personal and family history, medical history, violence history, criminal history, drug and/or alcohol use, and mental health. See, e.g., Statewide Standards, §§5.1, 5.2.

Note: Although the Statewide Standards recommend screening and referral for alcohol/drug, medical, or mental health problems, most batterer intervention service providers do not directly address these problems. These problems are separate from the issue of violence and should thus be separately addressed; a batterer intervention service may refer persons who need assistance in these areas to other appropriate sources. In any event, treatment programs for drug/alcohol, medical, or mental health problems should not be substituted for batterer intervention services, because such programs are not designed to address domestic violence. These ancillary issues in a batterer's life should be addressed concurrently with or prior to the violence. Statewide Standards, §5.1. For discussion of the relationship between alcohol or drug use and domestic violence, see Section 1.3(B). See Section 1.3(C) for discussion of illness-based violence.

The Michigan Batterer Intervention Standards contain the following curriculum objectives:*

F Identification and confrontation of abusing and controlling behaviors.

*On lethality factors, see Section 1.4(B) and Appendix A to the Statewide Standards.

*Statewide Standards, §7.1.

*Recommended lengths of program duration are exclusive of intake sessions.

- F Identification and discussion of the effects of abuse on victims and on children who witness the abuse.
- F Promotion of accountability and responsibility. This objective includes identification and confrontation of excuses for abuse.
- F Identification of cultural and social issues that contribute to the choice to use abusive behavior. These issues must not be allowed to excuse or justify abuse.
- F Identification and practice of non-threatening and non-abusive forms of behavior.

The Standards recommend that these objectives be conveyed in a group setting. Domestic violence researchers report that group intervention is preferred to individual sessions because it provides an environment where batterers can see their own behaviors in others, hold each other accountable, and learn from those who have been working on making personal changes. The maximum recommended group size in the Statewide Standards is no more than 15. Statewide Standards, §7.2b. The Statewide Standards recommend that group members be of the same gender. Statewide Standards, §7.2d.

Because domestic violence is potentially lethal and tends to increase in frequency and severity over time, interventions of 52 weekly sessions or more are recommended as optimal in the Statewide Standards, with 26 sessions being the acceptable minimum. Group sessions should meet at least once a week, and last from 90 minutes to two hours. Statewide Standards, §8.8.*

B. Contra-Indicated Interventions

The Statewide Standards do not specify a particular method or technique to be used by intervention services: “Programs may use diverse intervention methods and techniques to accomplish the primary goal of ending batterers’ use of violence and abuse.” Statewide Standards, §7.1. Nonetheless, the Standards contain recommendations regarding contra-indicated methods for intervention. These methods include some mental health approaches that may be helpful in other contexts, but are regarded as counterproductive or dangerous for use as primary interventions with batterers.

The Statewide Standards contain the following general description of inappropriate interventions for batterers:

“Procedures or techniques are inappropriate if: 1) they endanger the safety of victim(s) by disclosing confidential information or bringing victim(s) into contact with the batterer; 2) they reinforce the batterer’s denial of responsibility for his abusive behavior; 3) they blame the victim for the batterer’s abusive behavior; or 4) they otherwise support the batterer’s entitlement to abuse or control the victim.” Statewide Standards, §7.3.

With respect to specific types of approaches, the Standards characterize couples and family counseling as inappropriate primary interventions for

batterers. Because these approaches require joint participation by the abuser and victim, they may put the victim in further danger, or communicate to the abuser that the victim shares some of the responsibility for the violence. Section 7.3b of the Statewide Standards explains as follows:

“Couple counseling and/or family therapy are inappropriate as primary intervention for batterers. These approaches may endanger the victim by placing her in the position of self-disclosing information that the batterer may subsequently use against her, and by giving the batterer an opportunity to have contact with her and other family members. Such approaches avoid fixing sole responsibility on the batterer and may implicitly blame the victim for the abuse, even when statements to the contrary are made by counselors. Family or couple counseling may reinforce power differences between family members and can leave victims at a disadvantage.”

In addition to the foregoing practical concerns, joint counseling is problematic as a matter of court policy where domestic abuse rises to a criminal level. In most criminal cases involving stranger violence, it would be unthinkable to require the perpetrator and victim to attend joint counseling to resolve their differences. With limited exceptions, Michigan’s penal statutes hold convicted offenders solely responsible for their crimes without regard to their relationships with their victims. Accordingly, courts should never order joint counseling where the abuse involves criminal conduct; such orders diminish the seriousness of the criminal behavior, sending the message that the victim shares responsibility for the violence.

Note: Local batterer intervention standards that preceded the adoption of the Statewide Standards acknowledged that the parties to some relationships may benefit from couples or family counseling if the abused individual freely chooses to participate and certain criteria are met. These criteria include: the abuser has completed a batterer intervention service program and demonstrated accountability; the abused individual’s choice to participate is made from a perception that participation is safe; and, the therapist and the abused individual clearly understand that the therapy is not intended to stop the violence.* The Advisory Committee for this Resource Book notes that under these standards, a court is not the appropriate agency for deciding whether a couple should participate in couples or family counseling where domestic violence is present — this decision must be made by the parties to the relationship. Indeed, the requirement that the victim freely choose to participate in couples or family counseling makes court-ordered participation in it inappropriate in cases involving domestic violence.

Under the Statewide Standards, alternative dispute resolution methods are also contra-indicated in cases involving domestic abuse:*

“Criminal acts are not a subject for negotiation or settlement between the victim and perpetrator, because the victim does not have any responsibility for changing the perpetrator’s criminal behavior. Accordingly, batterers should not be referred to alternative dispute resolution services in lieu of batterer intervention. Such services typically include mediation, community dispute resolution, and arbitration. Besides being inappropriate to address criminal behavior, these services — which require equal bargaining power between the parties — cannot operate fairly in situations involving

*Ann Arbor Domestic Violence Coordinating Board, *Batterer Intervention Services Standards* (July, 1997); BISC Region 3, *Batterer Intervention Services Standards* (1997).

*See also Section 10.6 for a discussion of mediation in domestic relations cases

*See Statewide Standards, §7.3d. For discussion of factors that may accompany domestic violence without causing it, see Section 1.3(B).

domestic violence. Batterers exercise control in violent relationships, and alternative dispute resolution services afford them further opportunity to wield this dangerous control over the victim.” Statewide Standards, §7.3c.

Michigan’s statewide Batterer Intervention Standards further caution against approaches that tend to identify the batterer’s pathology or external circumstances as the primary cause of battering. These approaches are disfavored because they may reinforce the batterer’s denial of responsibility for violence if used inappropriately. Such approaches include:*

- F Psychoanalytic therapy that focuses on the perpetrator’s past experiences as a primary cause of battering.
- F Approaches that deal with battering as primarily a problem of stress management.
- F Approaches that deal with battering as primarily a problem of poor communications skills.
- F Anger management groups that focus on anger as the primary cause of battering.
- F Approaches that substitute addiction counseling for batterer intervention.
- F Techniques that identify poor impulse control as a primary cause of violence.

Although these methods are characterized as inappropriate for use as primary interventions against domestic violence, the Statewide Standards acknowledge that they may be helpful to some participants when integrated into a broader program that is based on batterer accountability. Statewide Standards, §7.3d.

Note: If a batterer is drug or alcohol dependent, separate substance abuse treatment is needed prior to, or in conjunction with, batterer intervention. Substance abuse counseling should not, however, be used as a substitute for batterer counseling, for it will not address the issues of violence or control that are present in a relationship where domestic violence is present. Statewide Standards, §5.1. See also Section 1.3(B).

Other approaches are identified as inappropriate because they contribute to the batterer’s denial of responsibility by implicitly or explicitly ascribing some of the responsibility for the violence to the victim. Included in this category of programs are addiction counseling models that identify the violence as an addiction and the victim as an enabler or co-dependent. Other inappropriate approaches identify the victim’s psychopathology as provoking battering. Statewide Standards, §7.3d.

Finally, programs that themselves use abusive or violent techniques are contra-indicated in the Statewide Standards because they reinforce the very behaviors that batterer intervention services are designed to stop. Such programs are described as follows:

“Approaches which identify men as heads of households, with the power to chastise and discipline victims, may promote continued abuse, even if the program specifically discourages physical abuse. Programs which promote physical or cathartic expression of anger may contribute to the belief that physical expression of anger is necessary and encouraged. Programs which use abusive or hostile confrontation techniques may reinforce belief in entitlement to the use of abusive control in other interpersonal relationships.”
Statewide Standards, §7.3d.

C. Participant Rights

Michigan’s statewide Batterer Intervention Standards make recommendations regarding participant rights. Batterer intervention services must provide participants with written policies or contracts regarding such issues as confidentiality, fees, attendance, and discharge criteria. See Statewide Standards, §8.0. Recommended policies on these issues are as follows:

F Fees

To reinforce accountability, Michigan’s Batterer Intervention Standards state that participants in batterer intervention services are expected to make some payment for the program. The Standards further recommend that service providers establish clearly defined payment policies, including provisions for indigent participants based on the ability to pay. See, e.g., Statewide Standards, §8.7.

F Confidentiality

The Michigan Batterer Intervention Standards provide for protection of confidential communications by program participants. There are specified limitations on confidentiality for safety reasons, however. Under the Statewide Standards, program participants must authorize release of information to the victim and the referring court and/or probation department. See Statewide Standards, §8.3. Further limitations on confidentiality are recommended by the Statewide Standards, as follows: 1) a batterer intervention service must comply with all legally mandated reporting requirements regarding suspected child abuse and neglect; 2) a batterer intervention service must comply with all legally mandated reporting requirements regarding the duty to warn third parties of threats of physical violence;* and, 3) a batterer intervention service must report to probation, the court, and/or Child Protective Services any criminal behavior or violation of court order relating to domestic violence that is relayed by the batterer during the course of service. Statewide Standards, §§6.1, 6.2, 8.2, 8.13.

*See MCL 722.623–722.624; MSA 25.248(3)–25.248(4) (duty to report child abuse and neglect) and MCL 330.1946; MSA14.800 (946) (duty to warn third parties).

F Discharge Criteria

Michigan’s Batterer Intervention Standards contain a recommendation that batterer intervention service providers establish written policies for discharge from their programs. These policies should cover discharge upon completion of the program (“contractual discharge”), as well as

discharge for failure to meet basic program requirements (“administrative discharge”).

Criteria for contractual discharge upon completion of a program under the Michigan Standards include: consistent attendance; cooperation with group rules; no reported incidents of physical violence or other abusive behavior; batterer’s acknowledgment of responsibility for the choice to use violence; compliance with court orders; compliance with participation requirements of the program; payment of required fees; and, compliance with other services received, e.g., drug/alcohol treatment. See Statewide Standards §7.4. Upon contractual discharge, the Michigan Standards further recommend that batterer intervention service providers notify the referral source and/or the victim that completion of the program is no guarantee that the participant will cease his abusive behavior. See Statewide Standards, §7.4.

In developing criteria for administrative discharge upon failure to meet program requirements, the Michigan Standards recommend that batterer intervention service providers consider the following factors: continued domestic violence; failure to make appropriate use of the program; failure to comply with program rules or policies; failure to pay fees; violations of a court order; and, criminal behavior. See Statewide Standards, §§7.5, 8.13.

D. Communicating with the Court

The Michigan Batterer Intervention Standards recommend that service providers make progress reports to the referring court about participants in their programs. The Statewide Standards recommend that each batterer intervention service provider develop an agreement with its referring courts regarding reporting procedures. Statewide Standards, §8.14. To facilitate communication with the referring court regarding a participant’s progress, it is critical that a batterer intervention service obtain the participant’s consent to release information to the court and/or probation department. See Statewide Standards, §8.3.

E. Communicating with the Victim

To promote safety for victims and others who may be threatened by an individual’s abusive behavior, Michigan’s Batterer Intervention Standards contain the following recommendations about communications with victims:

- F A batterer intervention service must have a policy and procedure for informing victims about its program. The information provided must caution the victim that an individual’s participation in the program will not guarantee safety or a change in the individual’s behavior. Additionally, victims should be given referrals to appropriate victim service providers. Statewide Standards, §8.5.
- F Victims always have the right to refuse contact with the batterer intervention service. Statewide Standards, §8.5.

- F If the victim gives the batterer intervention service information about a re-offense, the victim's permission should be obtained before reporting the offense to probation. Statewide Standards, §8.14.
- F A batterer intervention service should keep records of communications with victims in a separate file from communications with batterers. Statewide Standards, §8.12. This precautionary measure prevents batterers from gaining access to information that might endanger their victims.

2.5 Cross-Cultural Communication

Michigan is home to a diverse population. Its educational, economic, and recreational opportunities continue to attract people of many racial, national, and ethnic backgrounds. This section offers suggestions for effective cross-cultural communication. A partial list of culturally specific referral resources for survivors of domestic violence and sexual assault appears in Appendix B.

Note: The following text on cross-cultural communication is adapted from a document prepared by the Los Angeles County Commission on Human Relations (January, 2001).

As used in this section, “culture” means group customs, beliefs, social patterns, and characteristics. Nationalities and ethnicities have culture, as do businesses, occupations, generations, genders, and groups of people who have some common distinguishing characteristics or experiences. “Culture” is not always apparent from a person's appearance. For example, immigrants and third-generation U.S. citizens, city and small-town dwellers, deaf and hearing persons may all be indistinguishable on sight.

In national and ethnic groups, the components of “culture” include language, non-verbal communication, views on hierarchies (e.g., responsibilities, duties, and privileges of family or group members), interpersonal relationships, time, privacy, touching, and speech patterns. Groups other than nationalities and ethnicities may also have distinctive verbal and nonverbal perceptions and expression, shared values, standards, beliefs, and understandings; for example, language and values usually differ depending on age or occupation.

The following tips are based on observations of successful cross-cultural communicators. None of the behaviors that follow requires a particular personality or talent; the only underlying assumption is that both parties speak the same language.

Things to Do All of the Time

- F Remember that diversity has many levels and complexities, including cultures, and overlapping cultures. For example, there is great cultural diversity among Spanish-speaking populations in Europe, the Caribbean, Central America, North America, and South America, despite the fact that they share Spanish as a native language.

- F Respect people as individuals without making assumptions, and expect others to be thoughtful, intelligent people of goodwill, deserving of respect. Don't make judgments based on accent, wordiness or quietness, posture, mannerisms, grammar, or dress; rather, assume that there are good reasons why people do things the way they do.
- F Work to become conscious of your own biases.
- F Be willing to admit what you don't know.
- F Listen actively and carefully. Careful listening usually means undivided attention. Avoid such things as looking at your watch, looking around to see who else has arrived at the meeting, and avoidable interruptions. Listen not only for factual information, but also for glimpses of the other person's sensibilities and reality. Closely watch reactions. Notice what the other person asks about. It usually indicates not only interest in the subject, but that the subject is not too personal or sensitive to discuss openly. Stop talking the instant it looks as if the other person has something to say.
- F Accept responsibility for any misunderstanding that may occur, rather than expecting the other person to bridge cultural differences. This is easy to do by saying something like: "I'm sorry that I didn't make it clear."
- F Notice and remember what people call themselves, e.g., African-American or Black, Hispanic or Chicano, Iranian or Persian, Korean or Asian, and use those terms.
- F Remember that you are an insider to your culture, and an outsider to other cultures. Be careful not to impose. Showing off your knowledge of someone else's culture, for example, might be considered intrusive.
- F Look for aspects of the other culture that are admirable. When you identify such a characteristic, you may want to somehow indicate your appreciation of it.

Things to Do Much of the Time

- F Expect to enjoy meeting people with experiences different from yours. This tip is in the "much of the time" section and not in the "all of the time" section, because, although getting to know other cultures is stimulating and gratifying, it can take energy. There are times when each of us seeks out familiar things and people.
- F Be a bit on the formal side at first in language and in behavior. After you get acquainted, you might choose to be more casual. Even then remember to use what have been called the "magic words." "Please," "thank you," and "excuse me," are universally appreciated. Use formal terms of address unless and until the other person indicates a preference for the informal.
- F Be careful about how literally you take things, and how literally your statements might be taken. "Let's have lunch soon" or "Make yourself at home" are two examples of easily misunderstood courtesy phrases.
- F Expect silence as a part of conversation. Silence can mean that the person you're talking to is not interested, or defers to you on the subject, or thinks that the subject is his or her business. Or silence means that she or he is thinking over what you said before answering.

- F If it appears to be appreciated, act as a cultural guide/coach. Explain what the local custom/practice is, e.g., “Some people dress up for the holiday luncheon, but most wear ordinary work clothes.”
- F Look for guides/coaches to other cultures, someone who can help you put things in perspective.

Things to Do Some of the Time

- F Ask questions. Most people appreciate the interest in their culture. Each person can speak for his experience, and some will speak in broader terms. Be careful about asking “why,” however. It frequently has a judgmental tone to it, implying that the thing you ask about is not acceptable.
- F When you are asked questions, take care that your answers aren't too short. Make your answers smoother and gentler than a plain “yes” or “no,” or other short answers. Most cultures are less matter-of-fact than that.
- F Watch cultural groups interacting among themselves; learn what their norms are. Do they urge their views on one another? Do they flatter one another? Do they defer to one another? Do they maintain eye contact? How do they behave toward elders? Children? Women?
- F Open a subject for discussion without putting the other person on the spot. Try thinking aloud about your own experience and your culture. Thinking aloud is one way of interpreting your culture without talking down or assuming that the other person is ignorant. It also makes it safe for him and her to ask questions because you have been the first to reveal yourself.

Things Successful Communicators Never Do

- F Never make assumptions based on a person's appearance, name or group.
- F Never expect people of a population group to all think alike or act alike.
- F Never show amusement or shock at something that is strange to you.
- F Never imply that the established way of doing something is the only way or the best way.

2.6 Ethical Concerns with Judicial Participation in a Coordinated Community Response

Domestic violence is a phenomenon of such complexity that no single community institution acting in isolation can provide an adequate response. For example, a court cannot address criminal domestic assault unless the police have first arrested the alleged offender and the prosecutor has filed criminal charges. Issuance of a personal protection order will not adequately protect a domestic violence victim unless violations of the order are swiftly and strictly enforced. A court's efforts to protect victims and hold abusers accountable will thus be most effective if they are coordinated with the actions of other community service providers. Accordingly, many commentators suggest that local courts participate in community organizations that strive to achieve a coordinated response to domestic violence.*

*See Saunders, *Domestic Violence Perpetrators: Recent Research Findings & Their Implications for Child Welfare*, 3 Mich Child Welfare Law J 3, 8 (Fall, 1999).

Judicial participation in a coordinated community response to domestic violence gives rise to certain ethical concerns, which are explored in this section. This section also discusses cases in which criminal defendants have asserted that a judge should be disqualified from hearing cases due to bias or prejudice arising from participation in extrajudicial activities concerned with domestic violence.

A. Coordinated Response and the Code of Judicial Conduct

Under the Michigan Code of Judicial Conduct, a judge may participate in the activities of a community coordinating council against domestic violence as long as: 1) the judge's participation does not cast doubt on his or her ability to perform the function of the office in a manner consistent with the law; and, 2) the council's activities are concerned with the improvement of the law, the legal system, or the administration of justice. See Canons 2(E), 4, 5(B), and 5(G). Canon 4 provides as follows:

"As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, the judge is encouraged to do so, either independently, or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

"A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities:

"A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

"B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with such executive or legislative body or official on such matters.

"C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not individually solicit funds. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice."

See also Canon 5(G), which states in pertinent part:

"A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice."

Canon 5(B) provides:

"A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the

performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of a bona fide educational, religious, charitable, fraternal, or civil organization, subject to the following limitations:

“(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

“(2) A judge should not individually solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the office for that purpose, but may be listed as an officer, director, or trustee of such an organization. A judge may, however, join a general appeal on behalf of an educational, religious, charitable, or fraternal organization, or speak on behalf of such organization.”

In a relevant context, the State Bar of Michigan Standing Committee on Professional and Judicial Ethics applied the principles of Canon 5(B) in JI-66 (March 23, 1993). This informal opinion was issued in response to a judge’s inquiry whether a judge and a judicial law clerk could serve on the board of a civic organization providing counseling and shelter for victims of rape, child abuse, and other circumstances causing a need for such support. The organization’s staff members frequently accompanied victims to the court when criminal charges were heard to provide the victims with emotional support. When subpoenaed by counsel, staff members testified in particular cases regarding the appearance, attitude, and other condition of the victim when the victim arrived at the shelter or during treatment at the shelter. Criminal defendants could also be sentenced to assailant counseling with the organization. Other than testifying when called, however, the organization was not directly involved in court proceedings or litigation.

The Standing Committee concluded that the judge’s impartiality was not *per se* placed at risk when the judge presided over a matter in which a member of the organization was a witness. However, the Committee noted that the judge’s affiliation with the organization and the court’s referrals to the organization “may give the appearance that the judge is predisposed to a particular viewpoint regarding allegations of abuse.” Therefore, the Committee opined that “whenever a staff member of the organization is called to testify, the judge should disclose the judge’s membership on the board of the organization and recuse unless the parties ask the judge to proceed. If the affiliation results in frequent disqualification, the judge should resign from the organization.”

The Committee further concluded that the judicial law clerk was not a judicial officer whose conduct was regulated by the Michigan Code of Judicial Conduct. Although Canon 3(B)(2) requires judges to direct staff and court officials to “observe high standards fidelity, diligence and courtesy” to persons with whom they deal in their official capacity, judges are not required to regulate employees’ activities outside the scope of the employees’ official duties for the court. The Committee noted, however, that clerks who are licensed attorneys are subject to the Michigan Rules of Professional Conduct, and pointed out that MRPC 8.4(e) prohibits a lawyer from knowingly

assisting a judge or judicial officer in conduct that violates the Michigan Code of Judicial Conduct or other law.

In another relevant context, the Judicial Tenure Commission upheld judicial participation in community efforts to improve the administration of justice. In Advisory Opinion 68 (June 12, 1986), the Judicial Tenure Commission found that a judge may serve on a task force established to implement the Crime Victims' Rights Act, and may "express to the public the general desirability for victims' assistance programs."

For further relevant discussion, see:

- F Informal Opinion JI-67 (March 30, 1993) (A judge may sit as a member of an independent law revision commission providing information and assistance to the Legislature).
- F Informal Opinion JI-65 (February 25, 1993) (A judge may not serve on a legislative affairs and political action committee to support pro-business interests).
- F Informal Opinion JI-68 (April 26, 1993) (A judge may participate in health education and social awareness activities such as AIDS prevention and encourage others to support the same cause, but should not wear on the judicial robe symbols indicating the judge's support or opposition to a particular political, social, or charitable/civic cause).
- F Informal Opinion JI-84 (March 7, 1994) (A judge who attends a program or seminar at which the faculty argues issues that are nearly identical to those in a case pending before the judge is not required to advise the parties and their counsel in the pending case that the judge attended the seminar).
- F JTC/AO 96 (December 10, 1987) (A judge may not serve on a municipal downtown development authority concerned with matters other than the improvement of the law, legal system, or administration of justice).
- F JTC/AO 90 (July 31, 1987) (A judge may serve as a consultant on "court delay reduction" to the Adjudication Technical Assistance Project carried on by the Bureau of Justice Assistance of the U.S. Department of Justice).

Other jurisdictions that have addressed the ethical questions arising from judicial participation in a coordinated community response organization have come to various conclusions depending upon the activities of the organization and the judge's role in it. The following examples illustrate.*

The Indiana Supreme Court found that a judge's participation in a county coalition against domestic violence did not create an inference of bias or prejudice in *Allen v State*, 737 NE 2d 741 (Ind, 2000). In that case, a defendant convicted of crimes against his estranged wife moved for a change of judge, asserting that the participation of the judge and the judge's wife in the coalition's activities caused a reasonable basis to doubt the judge's impartiality. The judge's wife was president of the coalition, and the judge appeared and spoke at a radio phonathon designed to publicize the organization and to solicit donations for a shelter. Citing the equivalent of

*Some of these examples are also discussed in Hornsby, *Ethical Considerations for Family Court Judges*, 4 Synergy 2 (Summer, 1999).

Canon 4 of the Michigan Code of Judicial Conduct, the Indiana Supreme Court found no basis to support a rational inference of bias or prejudice on the part of the judge:

“While not strictly a bar association or judicial conference, an organization serving victims of domestic violence is not unlike various organizations dedicated to the improvement of the law. Indiana judges routinely appear and often speak at functions of organizations seeking, for example, to advance juvenile justice, to improve criminal rehabilitation, to prevent crime, and to encourage mediation and other alternative dispute resolution methods. This participation does not raise a rational inference of bias or prejudice if such judges preside over juvenile cases, criminal sentencing proceedings, probation revocation hearings, or jury trials. So it is with this judge’s appearance and participation with an organization seeking to assist the victims of domestic violence.”

In Florida, the Judicial Ethics Advisory Committee opined that a judge may speak to and submit proposed legislation to members of the Legislature in an effort to improve the law. In this case, a judge assigned to the court’s domestic violence division desired to submit proposed legislation and/or discuss proposed statutory amendments that would increase the maximum periods of incarceration and probation for guilty defendants in domestic violence cases. Citing the equivalent of Canon 4(A) of the Michigan Code of Judicial Conduct, the Committee concluded:

“[P]ursuant to...the Code of Judicial Conduct, a judge may communicate with members of the legislature on matters concerning the law, the legal system and the administration of justice. This would include speaking to members of the legislature and submitting proposed legislation concerning changes to improve the law, the legal system, and the administration of justice. However the judge must be mindful that he or she may do [sic] only so long as the judge’s activities do not (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; (2) demean the judicial office; or (3) interfere with the proper performance of judicial duties.” Judicial Ethics Advisory Committee Opinion 98-13 (July 7, 1998).

In a separate opinion, the Florida Judicial Ethics Advisory Committee found no prohibition against an administrative judge in a county domestic violence department serving on a domestic violence task force, as long as the activities of the task force were law-related and gender-neutral. The Committee noted:

“Although there is no blanket prohibition on a judge serving on a Domestic Violence Task Force, in light of the caveat...that a judge must regularly re-examine the propriety of continued membership in an organization, six members of the Committee believe that the reputation and activism of the leadership or make-up of an organization concerning racial, ethnic and gender issues and the resulting perceived impression of the agenda of the organization within a community are valid and proper factors for a judge to consider in evaluating membership. The current assignment of a judge and the frequency of the appearance of the organization or its membership in court are also factors which must be considered on a case by case basis.” Judicial Ethics Advisory Committee Opinion 95-14 (April 26, 1995).

In Arizona, the Supreme Court Judicial Ethics Advisory Committee found that a judge could not be a member, even on a limited basis, of a county domestic violence commission because the commission was not solely concerned with the improvement of the law, the legal system, or the administration of justice. The commission was a governmental body involved in several areas of public policy outside the legal system; its activities included matters relating to domestic violence and education, child care, and law enforcement as well as issues directly concerning the judiciary. The director of the commission had asked the judge-member to sign a letter purporting to commit the court and the judge “to achieve an environment of zero tolerance reference intimate partner violence.” Moreover, various documents related to the commission revealed that:

“the commission’s agenda includes attempts to influence law enforcement, prosecutors and the judiciary in their handling of domestic violence cases. Also apparent is the pro-victim mind set which the commission was created to propound....The commission appears to be too agenda-driven and advocacy-oriented for suitable involvement of the judiciary.”

The Ethics Advisory Committee also noted that if assigned to a particular committee, the judge would be expected to engage in fund-raising on behalf of the commission.

Citing Arizona’s equivalent of Canon 5(G) of the Michigan Code of Judicial Conduct, the Ethics Advisory Committee concluded that “[p]articipation in an advocacy group for domestic violence victims casts doubt on the capacity for unbiased decision making.” While membership on the commission was impermissible, however, the Committee observed that “nothing in the Code of Judicial Conduct prohibits a judge from providing information about the judicial system to [the commission] or from speaking on subjects relating to the improvement of justice in a forum that the commission might provide.” Supreme Court Judicial Ethics Advisory Committee Opinion 97-6 (May 28, 1997).

B. Disqualification for Personal Bias or Prejudice

In jurisdictions outside Michigan, criminal defendants have challenged judges’ qualifications to preside over cases involving domestic violence based on judicial participation in coordinated community response organizations. These challenges are based on statutory or other authorities regarding judicial bias or prejudice.

In Michigan, MCR 2.003(B) states the following grounds on which a judge may be disqualified from hearing a case:

“(B) Grounds. A judge is disqualified when the judge cannot impartially hear a case, including but not limited to instances in which:

“(1) The judge is personally biased or prejudiced for or against a party or attorney.

“(2) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

“(3) The judge has been consulted or employed as an attorney in the matter in controversy.

“(4) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.

“(5) The judge knows that he or she, individually or as a fiduciary, or the judge’s spouse, parent or child wherever residing, or any other member of the judge’s family residing in the judge’s household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding.

“(6) The judge or the judge’s spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

“(a) is a party to the proceeding, or an officer, director or trustee of a party;

“(b) is acting as a lawyer in the proceeding;

“(c) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

“(d) is to the judge’s knowledge likely to be a material witness in the proceeding.

“A judge is not disqualified merely because the judge’s former law clerk is an attorney of record for a party in an action that is before the judge or is associated with a law firm representing a party in an action that is before the judge.”

In *Cain v Dep’t of Corrections*, 451 Mich 470, 495 (1996), the Michigan Supreme Court stated that MCR 2.003(B)(1) “requires a showing of *actual* bias.” [Emphasis in original.] A party who challenges a judge on the basis of bias or prejudice must overcome a heavy presumption of judicial impartiality. 451 Mich at 497. “Absent actual bias or prejudice, a judge will not be disqualified pursuant to this section.” *Id.*, at 495. The Court further stated:

“Coupled with the requirement of actual bias, subsection (B)(1) also requires that the judge be ‘personally’ biased or prejudiced in order to warrant disqualification pursuant to this section....Simply stated, a showing of ‘personal’ bias must usually be met before disqualification is proper. This requirement has been interpreted to mean that disqualification is not warranted unless the bias or prejudice is both personal and extrajudicial. Thus, the challenged bias must have its origin in events or sources of information gleaned outside the judicial proceeding.” 451 Mich at 495-496.

While a favorable or unfavorable predisposition that springs from facts or events occurring in a proceeding may deserve to be characterized as “bias” or “prejudice,” this will not constitute a basis for disqualification unless it displays a “deep-seated favoritism or antagonism that would make fair judgment impossible.” 451 Mich at 496, citing *Liteky v U.S.*, 510 U.S. 540, 555 (1994).

Judicial disqualification may also be required to satisfy a constitutional due process requirement that the decision-maker be unbiased and impartial. The

Supreme Court in *Cain* noted that where the requirements of MCR 2.003(B)(1) have not been met, or where the court rule is otherwise inapplicable, a party may pursue disqualification based on due process principles. The Court cited *Crampton v Dep't of State*, 395 Mich 347 (1975) as the leading case on this issue, noting that it requires disqualification for bias or prejudice only in the “most extreme cases.” 451 Mich at 498. The *Crampton* standard is as follows:

“The United States Supreme Court has disqualified judges and decisionmakers without a showing of actual bias in situations where ‘experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.’ Among the situations identified by the Court as presenting that risk are where the judge or decisionmaker (1) has a pecuniary interest in the outcome; (2) ‘has been the target of personal abuse or criticism from the party before him’; (3) is ‘enmeshed in [other] matters involving petitioner...’; or (4) might have prejudged the case because of prior participation as an accuser, investigator, fact finder or initial decisionmaker.” 395 Mich 351 [citations omitted].

In *Wayne County Prosecutor v Doerfler*, 14 Mich App 428, 438-442 (1968), the Michigan Court of Appeals considered whether a trial judge’s membership in and appearances on behalf of a Catholic organization that worked to prevent distribution of obscene literature to children was grounds to disqualify him from presiding over a civil action to enjoin the distribution of allegedly obscene publications. Finding that a motion to disqualify the judge was properly denied, the Court of Appeals, reasoned as follows:

“A judge is not expected to bring with him to the bench a blank mind and personality....To require a blank mind is unreasonable, but to demand an impartial and clear appraisal of each new case is not. A judge may well be subconsciously prejudiced in one way towards the evidence or the parties in a case before him. It is his duty not to permit these prejudices to override his responsibilities in providing a fair forum for the determination of controversy....An appellate court must demand actual proof of claimed prejudice when reviewing the non-judicial activities of a judge, and when none is forthcoming that court must find no violation of due process has occurred....The activities of the trial judge [in this case] have been reviewed by this Court and we believe them to be no more than general public statements made with the intent of educating the community as to the existence and spread of obscene literature among young people.” 14 Mich App at 440-441.

The following cases from other jurisdictions have addressed defense motions for recusal of a trial judge on the basis of the judge’s participation in coordinated community response organizations.

F *Yates v State*, 704 So 2d 1159 (Fla App, 1998):

A defendant charged with domestic violence appealed from his conviction, asserting that the trial judge should have disqualified herself because she had established and chaired a task force on domestic violence. Before the events leading to the charges against the defendant, the judge had participated in a dedication ceremony at which the victim in the case

presented a wreath. However, there were no allegations that the judge knew the victim at the time of the dedication or recognized her from the ceremony during the course of the case. The district court of appeal affirmed defendant's conviction in a per curiam opinion; in a separate concurring opinion one judge on the panel commented as follows:

"[T]he judge has no affirmative duty to automatically step down from a case because of membership on a task force unless the agenda of the task force is inconsistent with the judge's duty to judge impartially.... Mere membership in the task force should not justify a belief that the judge cannot be fair unless there is a showing that the agenda of the task force advocates stiffer penalties for domestic abusers. The fact that a judge opposes domestic violence is no more relevant at sentencing than the fact that a judge opposes robbery or drug abuse; nor does it distinguish a particular judge from any other member of the bench.... If it could have been shown that the task force does advocate stiffer penalties for domestic abusers or that the judge has indicated, through words or practice, a tendency to more severely punish domestic abusers, then [defendant] would have had a basis for a reasonable fear that the judge would not be even-handed in the application of her discretion."

The concurrence further cited *State v Knowlton*, 123 Idaho 916 (1993), in which the Idaho Supreme Court found that a judge's service on a task force for children at risk would not prevent the judge from presiding over a probation revocation hearing involving child abuse. The *Knowlton* court held:

"A judge does not have an affirmative duty to withdraw from cases which merely tangentially relate to the judge's participation in an organization or committee. To hold otherwise would deprive the citizens of this state of the knowledge and experience which a judge brings to groups designed to improve the legal system."

F *Allen v State*, 737 NE 2d 741 (Ind, 2000):

A defendant convicted of crimes against his estranged wife moved for a change of judge, asserting that the participation of the judge and the judge's wife in a county coalition against domestic violence caused a reasonable basis to doubt the judge's impartiality. The judge's wife was president of the coalition, and the judge appeared and spoke at a radio phonathon designed to publicize the organization and to solicit donations for a shelter. The Indiana Supreme Court held that the participation of the judge and his wife in the coalition did not require disqualification under a rule requiring a showing that "historical facts" support a "rational inference of bias or prejudice."

F *State v Haskins*, 573 NW 2d 39 (Ia App, 1997):

A defendant convicted of the attempted murder of his wife appealed, asserting that his motion for recusal of the trial judge should have been granted. The judge sat on a committee that targeted the prevention of domestic abuse and promoted the better handling of domestic abuse cases within the court system. The governing statute provided for disqualification in cases where a judge "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding," and required a party to show actual prejudice

to sustain a motion for recusal. The appellate court affirmed the conviction, holding that there was no abuse of discretion in overruling defendant's motion for recusal. The court found that the judge's activities "were not in the nature of victim advocacy, but were geared toward case management issues. Her work, along with others, on a domestic abuse coalition looks not to a particular case but to improve the general framework of the system."

See also *Robinson v United States*, 769 A2d 747 (DC App, 2001), in which a defendant convicted of assault asserted on appeal that he was denied due process of law by virtue of the fact that his case was tried in a special unit of the Superior Court established to hear domestic violence cases exclusively. The defendant argued that the unit was structured so that the same judge presiding over a criminal prosecution for an intrafamily offense without a jury may also preside over other civil intrafamily matters involving the same parties, and be privy to evidence in those matters that would be inadmissible in the criminal trial. The appellate court found no due process violation, because the defendant did not claim that the judge in his case had received or considered any specific inadmissible evidence from any source. In so holding, the court cited a general principle that a trial judge's mere familiarity with a party and his or her legal difficulties through prior judicial hearings does not automatically or inferentially raise the issue of bias.

For a Michigan case decided using similar principles, see *People v Coones*, 216 Mich App 721 (1996), holding that the same judge may preside over civil restraining order and criminal stalking proceedings. This case is discussed at Section 3.11(C).